

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1199

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

LUIS PEREZ a/k/a HEKTOR PEREZ,

Defendant-Appellant.

*From a Judgment of Conviction of the United States District
Court for the Southern District of New York.*

APPENDIX FOR APPELLANT

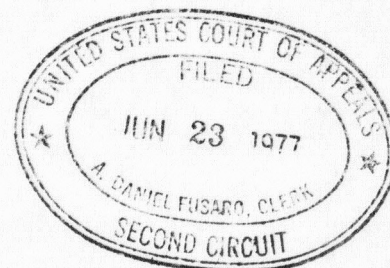
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DOCKET ENTRIES (pp. 1a-3a)

OFFENSE MO 11 0206-01 0842 a/k/a "Hector" indicted as
 MEANOR Mis ☐ Perez, HECTOR
 FELONY Fel ☒ District Office (LAST, FIRST, MIDDLE)
 No. of Defs 11 10 76 1045 11
 JUVENILE * 12

U.S. TITLE SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18:371	Consp. to viol. Federal Food Stamp Act	1
7:2023(b)	Unlawful transfer of food stamps & cards	2
18:641	Theft of Govt. property	4
18:287	Making false claims against the U.S. Govt.	6
18:1001	Making false statements to Dept. of Agriculture	9

U.S. MAG. CASE NO. 76-1134

RAIL • RELEASE
☐ AMT ☐ Fugitive
☐ Denied ☒ Set ☒ Pers. Recog
☒ PSA
 \$ 2,000
☐ Date ☐ 10% Deposit
☐ Bail Not Made ☐ Surety Bond
☐ Status Changed (See Docket) ☐ Collateral
☐ 3rd ☐ Other
 Pity Cust

II. KEY DATES & INTERVALS

ARREST	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began * 10-1-76 Summons Served First Appearance	High Risk Date 11-10-76 Indict Waived In Charging District	Information 11-10-76 1st Plea 11-18-76 Final Plea	Trial Set For 1/31/77 X NG ☐ G ☐ NOL G Plea W Drawn 1-31-77 2-8-77	Disposition of Charges 2-8-77 3-25-77 X Convicted Acquitted Dismissed On Government Motion

MAGISTRATE		DATE	INITIAL/NO	INITIAL APPEARANCE DATE	INITIAL/NO	OUTCOME
Search Warrant	Issued	10-1-76	NG - 08AJ	10-1-76	NG - 08AJ	☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Summons	Issued			10-8-76		☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
Arrest Warrant Issued	Served					
COMPLAINT		10-1-76	NG - 08AJ			
OFFENSE (In Complaint)		VIOLATION OF "FOOD STAMP ACT" 18 USC §371				

U.S. Attorney or Asst

ATTORNEYS

Defense ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

Richard Weinberg
791-0039

261

Rosado-04

* Show last names and suffix numbers of other defendants on same indictment information
 Collazo, A. -01, Lobriell-02, Rivera-03, Cuevas-
 Rodriguez-06, Diaz-07, Torres-08, Fernandez-09, Comacho-10, Collazo, J. -12

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY
10-1-76		Complaint filed, deft. presented, counsel assigned, Stuart Shaw, 600 Madison Ave., NYC, deft. released on bail. Address: 404 Chestnut Street, Brooklyn, NY.	
11/10/76		Indictment filed, 76 Cr. 1045.....Cooper, J.	
11-18-76		Deft. (no atty. present) thru interpreter R. Schoen, Court directs entry of not guilty plea. Bail \$2,000. P.R.B. cont. Case assigned to Judge Wyatt for all purposes. Cannella, J.	
11-30-76		All Dfts. - Pre Trial Conference Held. Trial Date set for 1/31/77 @9:30 A.M. in Rm. 312. Motions to be filed by Dec. 17, 1976.....Wyatt J.	
1-3-77		Filed Govts. Affdvt. in opposition to dft. Perez's pre trial motions.	
1-3-77		Filed Govts. Memorandum of Law.	

opened without an order of the Court ~~En~~ Envelope contains motion papers.....Wyatt J.

1-4-77 Dft. Hector Perez - Dfts. atty. Stuart Shaw present w/AUSA Robert Jossen. Motion to sever the dft. ----Denied; motion to dismiss denied, etc....Wyatt J.

1-4-77 Filed Memo. End. on motion dtd. 11-17-76. Motion denied on condition that the govt, carry thru on the undertakings with respect to the discovery sought by bill of particulars..... Wyatt J.

11-17-76 Filed Dfts. Notice of Motion for an order of Severance, Govt. using evidence as indicated, dismissal of indictment, Etc.

1-5-77 Filed Memo. End. on letter dtd. 1-4-77 From Stuart R. Shaw. I will not order disclosure at this time of the names of the government witnesses.....Wyatt J. (mn)

1-5-77 Filed letter from Stuart R. Shaw, to Judge Wyatt dtd. 1-4-77. Re: List of Govt. Witnesses.

2-1-77 Filed Dfts. request for voir dire to the jury.

2-1-77 Filed Govts. Proposed examination of prospective jurors.

1-31-77 Jury Trial Begun as to the Dft. Hector Perez (Atty. Stuart Shaw) AUSA - Richard Weinberg.....Wyatt J.

2-1-77 Jury Trial Cont'd

2-2-77 " " "

2-3-77 " " " Dft. Perez - Ct. 9 - Dism. by Court.....Wyatt J.

2-7-77 " " " & Concluded. Jury Deliberations begin...Wyatt J.

2-8-77 Jury Deliberations Cont'd & Concluded. Jury Verdict as follows: Dft. Hector Perez - Guilty on Cts. 1, 2, 4, & 6 & in excess of \$100.00...Sent. date adj. to 3/25/77 @ 4PM. in Rm. 706 as to both dfts. & bail is cont'd on both dfts. PSI Ordered...Wyatt J.

2-10-77 Filed Supplemental Request to charge Character of the Accused.

2-10-77 Filed Supplemental Request to charge on behalf of Dft. Hector Perez.

2-10-77 Filed Request to Charge on behalf of dft. Hector Perez.

2-10-77 Filed Govt. Request to Charge.

3-2-77 Filed CJA 21 Copy 2 Approving payment to Richard Schoen, 33 Hollywood Avenue, Lynbrook NY 11563 dtd. 2-8-77.....Wyatt J.

3-2-77 Filed CJA 21 Copy 5 Appointing Richard Schoen, 33 Hollywood Avenue, Lynbrook, NY 11563.....dtd. 2-8-77.....Wyatt J.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

PROCEEDINGS (continued)

Document No.)

Filed Govts. Sentencing Memorandum.

3-25-77

Filed Judgment & Commitment (Atty. Stuart Shaw Present) The Dft. is hereby committed to the custody of the aty. gen. or his authorized representative for imprisonment for a period of THREE (3) MONTHS on each of counts 1,2,4, & 6 to run concurrently with each other. The dft. os to surrender on March 29, 1977 @ 10:30 in Room 506 (Part I). The dfts. bail of \$2,000 PRB is continued until the date of surrender.....
Wyatt J.
 Issued Commitment 3-30-77.

3-30-77

Filed Dfts. Notice of Appeal from Jury Verdict on 3/25/77.
 (mailed notice)

JUDGMENT OF CONVICTION
United States of America vs. (Filed March 25, 1977)

4a

United States District Court for

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

HECTOR PEREZ

DOCKET NO.

76 CR. 1045 (IBW)

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government,
the defendant appeared in person on this date Richard Weinberg, AUSA
(through interpreter, Richard Schoen, sworn)

MONTH DAY YEAR
March 25, 1977

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Stuart Shaw, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

unlawfully, wilfully and knowingly using and possessing authorization to purchase cards, stealing and knowingly converting to his use and to the use of another, and without authority,

Defendant has been convicted as charged of the offense(s) of did sell, convey and dispose of records, vouchers, moneys and making false, fictitious and fraudulent claims to the United States Department of Agriculture to pay for the value of food coupons and conspiring to do so.

(Title 18, United States Code Sections 2, 371, 287 & 2 and 641 & 2.)

(Title 7, United States Code Section 2023(b).)

as charged in cts. 1, 2, 4 & 6

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3)

MONTHS on each of Counts 1, 2, 4 & 6 to run concurrently with each other.

SENTENCE OR PROBATION ORDER

The defendant is to surrender on March 29, 1977 at 10:30 A.M. in Room 506 (Part I).

The defendant's bail of \$2,000 PRB is continued until the date of surrender.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Innocent B. Watt, U.S.D.J.

Date

3-25-77

MICROFILM

MAR 25 1977

LETTER DATED SEPTEMBER 12, 1975 TO ROSADO COUNTRY FRESH
EGGS INC. FROM BRONX FOOD STAMP PROGRAM FIELD OFFICE

5a

1910 Arthur Avenue
Bronx, New York 10457

(pp. 5a-6a)

September 12, 1975

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Jose Rosado, President
Rosado Country Fresh Eggs Inc.
814 E. 182 St.
Bronx, N.Y. 10457

Dear Mr. Rosado:

This will confirm a visit to your warehouse on September 2, 1975 by
our representative, Mr. Pashoukos.

During his visit our representative discussed with you the store's
unusually high rate of coupon redemptions and pointed out that this
rate of redemptions to food sales is much higher than that of other
stores in the area. He suggested that this high rate might indicate
the presence of violations of the regulations governing the Food Stamp
Program. You stated that the high redemption rate was due to the fact
that you now own 4 trucks instead of 1, three of which are always
dealing with street trade at various areas of the Bronx and Manhattan.
The fourth does wholesale trade with about 200 stores. You also stated
that you do not combine your wholesale and retail food coupon business.
You denied that violations have occurred at the store.

The regulations governing food coupon transactions were completely
reviewed with special emphasis on those which prohibit the sale of
ineligible items as defined in section 270.2 (a) and that coupons
can only be accepted from eligible households in exchange for eligible
foods as indicated in section 272.2 (b), posting of the Official Food
List, section 272.2 (a), the acceptance of food coupons, section
272.2 (d), proper change-making procedures, section 272.2 (c),
acceptance of coupons for back bills, section 272.2 (g).

You should take special care to prevent violations because they may
lead to possible disqualification from the Food Stamp Program and you
are responsible for violations committed by any person handling food
coupon transactions in your store. It is vital that coupons be accepted
in full accordance with the regulations, a copy of which is enclosed
for your use and reference.

BEST COPY AVAILABLE

6a

-2-

If we can help you in any other way to meet your responsibility as an authorized retailer in the Food Stamp Program, please let us know.

Sincerely,

ERIKA GRANT, SIC
Officer-in-Charge
Bronx, N.Y. Field Office

RECEIVED
JAN 1 1963
DECEMBER 1962

REEL NO. 694.

- Test of Nagra recorder.

Special Agent

Burke - Today is September 24, 1976. The day of the week is Friday. The time is now 3.45 p.m. We've just installed a Nagra body recorder on the person of José Rosado. This is the second tape that's going on Rosado today. This is case number New York 2748-91, case of "Rosado Country Fresh Eggs". The purpose of this installation is: Rosado will now go to the Broadway Check casher at Broadway and 158th in Manhattan for the purpose of picking up food coupons. For purposes of voice identification, I'll now ask Mr. Rosado to identify himself.

José Rosado - I am José Rosado

S.A. Burke - Mr. Rosado, do you agree voluntarily to have this recorder placed on your body?

José Rosado - yes sir

S.A. Burke - thank you.

(Latin music can be heard in the background)

Rosado - Modesto can't even talk

Hector - huh?

Rosado - Modesto--he's in the hospital

Hector - oh yes

Rosado - his nose is still crooked

Hector - (unintelligible)

Rosado - huh?

Hector - did he call you? did he call you on the phone?

Rosado - I called his wife

Hector - ooh!

Rosado - to say hello, and she then gave me the hospital number. I called the hospital

Hector - he cannot talk

Rosado - he cannot talk. They were going to remove a bone from his nose. Ah! it's good people

Hector - well---seventy five for ninety

Rosado -- do you have that?

Hector - not all, part of it

Rosado - give me whatever you have

Hector - because--you know---(unintelligible)--little by little. There is not much, everybody puts it in the bank and...

8a

Rosado - what do you say?
 Hector - (unintelligible)
 Rosado - what do you have, only half of it?
 Hector - no, I have most of it
 Rosado - huh?
 Hector - I have twenty thousand, thirty thousand dollars
 Rosado - in coupons
 Hector - (unintelligible)...800 per week I also have it ready there
 Rosado - ok. Are you alone today?
 Hector - (unintelligible)
 Rosado - huh?
 Hector - Junior is buying cigarettes
 Rosado - (unintelligible)...no, not this one, this one one has a prize, this one has dollars, with this one I shall make 5,000 firecrackers! 5,000, 100
 Hector - zero, two
 Rosado - zero, two?
 Hector - zero, two
 Rosado - these twos couldn't be better!
 Hector - zero, two
 Unidentified Male voice - (unintelligible)
 Rosado - here, put that over there, zero-two goes and the other two is coming now
 (Music can be heard in the background)
 Rosado - isn't there any soda around here? (laughs) not even cold water. You have no shame!
 Hector - (unintelligible)
 (Music. Other voices can be heard in the background)
 Rosado - give me a little water
 (other voices in the background)
 Rosado - how many cards are here then?
 Hector - I have there--I have the 80, 80 ---I have two packages there of two forty...five, five
 Rosado - huh?
 Hector - 340 counting the 80 that you brought me
 Rosado - ok, fine
 Hector - but from this package here...but from this

Hector (contd.)- package here (unintelligible)

Rosado - (unintelligible)

Hector - no (unintelligible)

Rosado - you are cheating me. I think--the business---
everybody's checking. No, I'm not going to check
on you Papi, nor on Modesto. It's my employees

Hector - you know that ...

Rosado - (cutting in) it's Joe and Collazo and all the
people I do business with. Somebody is cheating
me and I don't know who

Hector - (unintelligible)

Rosado - right
(Unintelligible voices and music can be heard
in the background)

Hector - (unintelligible)...exactly the ones which were
in the package
(Unintelligible voices and noises)

Hector - I'll put it in on Wednesday after the F start
coming in. I can't put it in now because I've
put a lot
(someone is shouting)

Rosado - right

Hector - and sometimes to put one package in I have to
hold mine for two or three days and I don't to.
On wednesday, when the F come in...(unintelligible)

Rosado - ok

Hector - then, these 15 I'll put them together with
the 80

Rosado - ok
(Noises that sound like paper being handled)

Rosado - do you know when is Modesto coming?

Hector - he's still in the hospital. I've just called him

Rosado - no, he said he'd get out this week or next

Hector - but he's not going to come to work right away

Rosado - what did they do to him? did they fix up his nose?
(Noises that sound like paper being handled)

Rosado - huh?

Hector - I don't know what they did to him

Rosado - but Modesto has a good nose. There's nothing wrong
with his nose as far as I know, you know
(Unintelligible voices in the background)

Rosado - I never saw anything wrong with him

10a

Rosado
(contd.) - had he not told me, I would never have noticed
That's what money does
(Unintelligible voices in the background)

Rosado - how much is left here?

Hector - 13

Rosado - (unintelligible)

Hector - (unintelligible)

Rosado - then it's all right
(radio can be heard in the background)

Hector - (unintelligible)

Rosado - no, not today. I owe you 80 dollars, I owe you

Hector - (unintelligible)

Rosado - huh?

Hector - are you going to take (unintelligible)

Rosado - it's all right. I'll leave it for another day

Hector - when are you coming back?

Rosado - on monday, monday or tuesday I'll give it to you

Hector - no, you know--because I had a problem with the
money, I counted with this money

Rosado - don't count on my money fuck!

Hector - look, look, look, today--you know what happens?
look at this note, look 42.000, 40.000, 30.000
this money--there are days when there is only
15.000, this is money that if I had, I wouldn't
have to do this. I took \$40.000 to the bank today.
Look at the note..42.000. The more money it can
hold for me...

Rosado - I'll settle the account on monday or tuesday, ok?
(Radio in the background)

Rosado - I have to take the coupons to the bank in order
to be able to work because...

Hector - (cutting in) (unintelligible)

Rosado - (unintelligible)...I spoke to Modesto, he knows
how I am, then...

Hector - (cutting in) you already know (unintelligible)

Rosado - right

Hector - Junior! the man of the moment

Junior - the man of the bills

Rosado - no, the man of the bills is Collazo, I mean
Modesto

Junior - Modesto Diaz

Hector - did you ask (unintelligible)...about 80 dollars?

Rosado - I forgot. I'll pay them
(unintelligible voices in the background)

Rosado - you know how I am. We are---you know--they cheat on me and I let myself be cheated, in time everybody has to pay his dues
(Radio can be heard in the background)

Rosado - Modesto, I mean Junior, this hairdo is awful. Let it grow
(Unidentified voice)

Rosado - is this what I owe you?

Hector - yes, see? that's what I pay. I've put an exact amount because I have many cards

Rosado - ok. That's what I owe you, right?

Hector - up to this date

Rosado - seventeen thousand. Give me a piece of paper to put it in my pocket--the numbers

Hector - here it is

Rosado - not like that. I'll put it in my wallet. It's seventeen thousand eighty nine. How much am I taking in coupons now? --twenty three thousand zero one

Hector - thirty, thirty, thirty, thirty thousand

Rosado - oh! thirty thousand

Hector - one hundred and nine

Rosado - one hundred and nine

Hector - are you with him?

Rosado - not with me, with that ugly face, no!

Hector - are you with him?

Rosado - are you crazy? you must be kidding!

Hector - he says that I must be kidding, he says that I must be kidding!

Rosado - the other guy does not come around? This morning I saw a plate---what a nice plate to look for! it was the 220

Unidentified male voice - the 0 - 22

Rosado - put 10 dollars on it
(Unidentified voices shouting)

Rosado - it already costs 20 dollars the (unintelligible)

Hector - (cutting in) you are broke

Rosado - really broke

12a

Hector - are you calling me? because I am busy
(Music. Voices. Noises)

Rosado - to 114 and 109. I'm broke today

Hector - it's my birthday

Rosado - happy birth...fuck! that's why you look so nice!
Fuck!

Hector - it's my birthday

Rosado - twenty five years old?

Hector - 25 years old
Listen, did you (unintelligible)...today?

Rosado - which one? a paper? Ten to number 0 and ten to
number 2
(Unidentified voices shouting. Laughs)

Unidentified
Male voice - Hector keep this

Rosado - huh?

Hector - if number 0 or number 2 comes up, then...

Unidentified
male voice - what numbers did you play? because I don't
remember

Rosado - 1 - 0 - 9 and 1 - 14

Unidentified
male voice - that's his?

Rosado - number 114 is his and 109 is mine

Unidentified
male voice - with half and half, right?

Rosado - half and half

Unidentified
male voice - listen. I couldn't remember that it was 1-14

Rosado - I was a policy-maker, my friend. I used to bank
40.000 dollars

Unidentified
male voice - 1-0-9 half and 1-14 half

Rosado - I lost everything

Unidentified
male voice - yes? (laughs)

Rosado - I even lost a grocery store. The last thing I had
left was the grocery store. The youngfellow told
me that it was 9-90. I was broke and I wanted it
with my soul. I said: listen...I've lost, take it
for the number, and he took it. I used to pay 25
dollars rent and I used to sell \$2.500 per week
not counting the beer. It was a treasure, a gold
mine. I gave it to him
(Unidentified voices shouting numbers. Music)

Hector - was it 9-90 the number that you lost your grocery
store on?

13a

Rosado - yes--no, it was the number on which they got me
Hector - give him ten dollars
Rosado - I don't have any. I'm broke (laughs)
Hector - then...
Rosado - good-bye Papi. I'll see you monday or tuesday
Hector - good-bye
Rosado - keep it for me in case I win you'll certainly
get a tip
Unidentified male voice - (unintelligible)
Rosado - yes 80. That's....Well there you have it. If it
wins you get 40, ok?
(Traffic noises)
Rosado - yes I'm leaving.
Listen, I thought that I'd stolen an 'avocado'
now someone else stole it from me! (laughs)
can't you stop fag? Ah fuck you!

14a

AUTHORIZATION TO PURCHASE FOOD STAMP COUPONS



The City of New York

57136212

AUTHORIZATION TO PURCHASE FOOD STAMP COUPONS

W 1297173
YOU MUST
ENDORSE THE
CERTIFICATE
ON THE BACK
OF THIS CARD
1093045-6

1093045-6
BROOKLYN

10. 11.50

CALL NUMBER	DATE
200121	04

ISSUE DATE	ISSUE TIME
01	31 11

*** 57136212 04 101 00 132 00

57136212

BEST COPY AVAILABLE

**COURT OF APPEALS
SECOND CIRCUIT**

**UNITED STATES OF AMERICA,
Appellee,**

- against -

**LUIS PEREZ a/k/a HEKTOR PEREZ,
Defendant-Appellant.**

**From a Judgment of Conviction of the U.S. LDist.
Court for the Southern Dist. of N.Y.**

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

SS.:

I, Reuben A. Shearer, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 211 West 144th Street, New York, New York 10030.

That on the 23 day of June, 1977 at One St. Andrews Plaza
New York, N.Y.

deponent served the annexed *Appendix*

upon
U.S. Attorney-Southern Dist.
Robert Fiske, Jr.

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 23
day of June, 1977

Reuben A. Shearer

Reuben A. Shearer

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950

Qualified in New York County
Commission Expires March 30, 1979